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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

T.R.A. DOCKET ROOM

JOINT PETITION OF)
TENNESSEE-AMERICAN WATER)
COMPANY AND MARION COUNTY,) DOCKET NO. 03-00388
TENNESSEE FOR APPROVAL OF)
PURCHASE AGREEMENT)
)

**DIRECT TESTIMONY OF
BERNIE MCDOWELL**

Q: Please state your name and place of residence.

A: My name is Bernie McDowell. I am a resident of Marion County, Tennessee. I was formally a member of the Marion County Commission for 26 years. My last term on the commission ended in August of 2002. In addition, I was chairman of the Suck Creek Utility District since it was chartered back in the late 1970's. Accordingly, I am personally familiar with the facts associated with the transfer of the assets of the Suck Creek Utility District to Marion County and the subsequent agreement to convey those assets from Marion County to Tennessee American.

Q: What is the purpose of your testimony today?

A: The purpose of my testimony is to provide information to support the joint petition filed by Tennessee American and Marion County for the approval of the purchase of the assets that make up the Suck Creek Water System.

Q: Please give the Authority a brief history of the Suck Creek Utility District and the events that led up to the negotiation with Marion County and Tennessee American in regard to the transfer of the assets of the utility district.

A: The area known as "Suck Creek" in Marion County has had a long history of problems in obtaining a reliable source of water. The Suck Creek Utility District was formed in the late 1970's in an effort to acquire grant funds and other financing in order to help solve the water problems in the area. It took approximately 20 years in order to put the funding, plans and facilities in place for Suck Creek Utility District to begin supplying water. We began supplying water to a limited number of customers in 1991. Wells were the main source of supply. In 1999 and 2000, the area experienced drought conditions which created a water supply crisis. In order to address the water supply emergency, the Utility District installed a new well. Unfortunately, even with the new well, the water shortages were only marginally resolved. Tennessee American assisted during our time of water need and shortage by sending tanker trucks of water. It was a constant battle to

keep the water flowing in the system. As chairman of the Utility District, it was my responsibility, along with the other board members, to keep the water flowing. Needless to say, my responsibilities and efforts as chairman of the Suck Creek Utility District severely impaired my own personal business interests due the time it was required to physically work on the system. As a result of the water shortage in 1999 and 2000, the Tennessee Department of Environment and Conservation ("TDEC") imposed a moratorium on new connections. Accordingly, the Utility District as well as the Marion County Commission recognized that there could be no additional residential and/or commercial and industrial growth without addressing the current and long term water needs in the area. The Utility District simply did not have the financial resources and/or the professional water resources to expand service and to locate and construct an alternative water source. With the assistance of the County, the Utility District obtained approval for a \$500,000 Community Development Block Grant to be utilized to construct a pipeline to connect to an alternative water source, but neither the County nor the Utility District had the necessary funds to match or add to the grant in order to effectuate a complete project. At some point after our water crisis in 2000, I approached Tennessee American in my capacity as Chairman of the Suck Creek Utility District as well as a Marion County Commissioner and inquired as to the interest of Tennessee American in taking over the system. I worked closely with the County Executive and other commissioners in attempting to make this transaction a reality.

With the assistance of the County Executive and the Marion County Commissioners, the Utility District consolidated and transferred the water system and all of its franchises, facilities and other assets and property as well as liabilities to the County for the purpose of more efficiently and conveniently furnishing the service or services authorized by the Utility District's order of creation. It was also apparent that the County did not have the resources to continue in the operation of the system. As a result, the transaction between Marion County and Tennessee American was negotiated.

Q: Why did the Suck Creek Utility District simply not transfer its assets directly to Tennessee American?

A: It is my understanding that under state law a utility district is not typically authorized to directly transfer its assets to an investor owned utility company. However, the County has sufficient authority to transfer the assets of the water system to Tennessee American.

Q: Why was it necessary for Marion County to enter into the Operation and Maintenance Agreement with Tennessee American prior to the approval of the purchase agreement by the authority?

A: Well from a personal standpoint, I was ready to get out of the water business. As I previously mentioned, my responsibilities as Chairman of the Suck Creek Utility District were time consuming and severely interfered with my private business. I simply could no longer continue as chairman of the Utility District and there was no one else who was willing to take over. More importantly, time was literally running out on the \$500,000 CDBG grant that Marion County had been awarded. Unless construction on a connector

line to an alternative source of water began by June 30, 2003, the County was in jeopardy of losing the CDBG funds. By entering into a long-term operation and maintenance agreement, the CDBG funds were retained and construction began on the connector lines in June of 2003.

Q: Has the community been supportive of the transfer of the assets of the Suck Creek Water System to Tennessee American and the operation of the system by Tennessee American?

A: Yes the community definitely supports this transaction. Without acquiring an alternative source of water and making other necessary improvements to the system, there was essentially no growth potential in the area. With the connection to the alternative source of supply, we fully expect the moratorium imposed on new connections by TDEC to be lifted in the near future.

Q: Have you noticed an improvement in the water system since Tennessee American took over the operation in April of 2003?

A: Yes, there has been a significant improvement on the operation and maintenance of the water system. Tennessee American has installed or is in the process of completing the installation of a computer controlled system. New valves and other improvements have been made to the system. It is my understanding that the connector facilities to the alternative source and supply through the Lone Oak Utility District system is close to completion. We are pleased to have a professional water company such as Tennessee American providing the service in our area. We definitely do not want to go back to the way it was prior to Tennessee American taking control.

Q: The purchase agreement also contains a grant of franchise to Tennessee American to allow it to continue operating within the public rights of way. Please describe the extent of the negotiations over the terms and conditions of the purchase agreement, including the franchise.

A: There were numerous meetings between Tennessee American and representatives of Marion County as well as the Utility District over the terms and conditions of the purchase agreement and franchise. These were arms length negotiations and both parties were represented by attorneys. The agreement went through numerous drafts and there was significant give and take in the negotiations.

Q: In your opinion, is the acquisition by Tennessee American of Suck Creek Water System and the franchise provided therein in the public interest?

A: Yes, the purchase agreement and the franchise are necessary and proper for the public convenience and properly can serve and protect the public interests. I would encourage the Authority to approve the petition.

No further questions.

Burney M. McDowell
Burnie McDowell

Sworn to and subscribed before me
this 20 day of January, 2004.

Lynda Lu Perrin

Notary Public

My Commission Expires: May 28, 2006